

AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND

A.G. CONTRACT HGD-87-129

ECS FILE IGA-87-38

Project F-028-1-529

A.G. CONTRACT NO. KR 88-0047-TRD

SUPERSTITION SPRINGS DEVELOPMENT COMPANY
A Division of Western Savings & Loan

THIS AGREEMENT ("Agreement") is entered into this 8th day of January, 1988, between the STATE OF ARIZONA, acting by and through its Department of Transportation, hereinafter referred to variously as "ADOT: or STATE" and Superstition Springs Development Company, a Division of Western Savings & Loan, hereinafter referred to as "DEVELOPER."

STATE is empowered by Section 28-108, Arizona Revised Statutes to enter into this Agreement and has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and, the Director of the Arizona Department of Transportation has delegated to the undersigned the authority to execute same on behalf of the STATE;

DEVELOPER desires to cause a half-diamond traffic interchange to be constructed at Superstition Springs Boulevard (including but not limited to design, dedication of right-of-way, and construction), and Superstition Freeway. (1/2 mile west of Power Road)

THEREFORE, DEVELOPER and STATE agree as follows:

DEVELOPER SHALL:

1. Complete the preparation of all plans and specifications ("Plans and Specifications") for the construction of a half-diamond traffic interchange 1/2 mile west of Power Road on the Superstition Freeway for STATE approval. In November, 1987, the DEVELOPER's consultant will submit plans to the STATE for review.
2. Upon approval of the plans and specifications by the State, the Developer shall deposit with the State, its irrevocable letter of credit in a form acceptable to the State in the amount of \$3,000,000.00 which is an estimate of the total cost for the construction of the Interchange.
3. When the STATE has received bids for the construction of the Interchange, the DEVELOPER, in conjunction with ADOT, shall determine if a construction contract shall be awarded. If the construction contract is awarded, the DEVELOPER's letter of

03/08/88

APPROVED AND
FORWARDED BY
SUPERSTITION SPRINGS DEVELOPMENT COMPANY
and

credit shall be amended to conform to the amount of the successful bidder's estimated cost of construction. If it is determined that a construction contract should not be awarded; then the Developer agrees to reimburse the State of Arizona for its actual costs in preparing this project for bidding, not to exceed \$25,000.

4. During construction, the DEVELOPER agrees to deposit on a monthly basis an amount of money for payment to the contractor equal to the Monthly pay estimate prepared by the STATE. The STATE shall make the monthly pay estimate by the 25th of each month based on the contractors' performance during the preceding 30-day period and shall promptly deliver a copy to the DEVELOPER. The DEVELOPER shall, within 10 days after receipt of monthly pay estimate, deposit with the STATE an amount of money equal to the monthly estimate. If payment by the DEVELOPER is not made within 20 days following delivery of a copy of the monthly pay estimate to the DEVELOPER, the STATE may draw the delinquent monthly pay estimate from the letter of credit deposited by the Developer.
5. In addition to all costs as heretofore mentioned, the Developer agrees to pay all costs related to construction change orders, delays, or claims for extra compensation made by the contractor.
6. The DEVELOPER agrees to accept the drainage from the Traffic Interchange onto their property and to assume liability for the concentration and diversion of flows and any impacts of any ponding or discharge of flows along the roadway.
7. The DEVELOPER agrees to dedicate all necessary right-of-way for construction of the Interchange.
8. The DEVELOPER agrees that the connecting cross roads (Superstition Springs Boulevard) will be constructed prior to completion of the construction of the Traffic Interchange.

STATE SHALL: (Except as noted, the following items shall be performed at State Expense.)

1. By its execution of this Agreement, the STATE has agreed to review and approve, and if satisfactory, accept certain plans and specifications for construction of the new Interchange.
2. Obtain all necessary approvals for the addition of the Interchange.

3. The parties acknowledge that all rights-of-way necessary for the Interchange are to be dedicated to the STATE by the DEVELOPER.
4. Follow established STATE procedures for the bidding of the project.
5. Appoint a resident engineer, for the administration of the contract; the satisfactory completion in accordance with plans specifications and approved change orders. The resident engineer shall decide all questions relating to the quality and acceptability of materials furnished and work performed; all questions which may arise as to the interpretation of the plans and specifications, and all questions as to the acceptable fulfillment of the contract.
6. Immediately after approval of the Plans and Specifications, submit the complete bid package to DEVELOPER for approval, and upon such approval, solicit bids, award a contract for the Interchange construction and improvements and administer the construction contract to completion.
7. Immediately after the construction contract is awarded, proceed with the construction of the Interchange.
8. Accept, upon completion, the Interchange as a part of the State Highway System.
9. Refund to DEVELOPER any monies donated and not used on this project for whatever reason.

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. The parties hereto acknowledge this agreement is subject to cancellation by the Governor pursuant to the provisions of § 38-511, Arizona Revised Statutes.
2. In the event any controversy arises out of this Agreement and relating to terms or provisions of this Agreement, the parties agree as follows:
 - a. Prior to executing a contract for the construction of the Interchange, in the event there are disputes between the STATE and DEVELOPER pertaining to the design, Plans and Specifications for the Interchange or cost, the parties agree to select an independent third party as arbitrator with regard to the dispute and the decision of the third party arbitrator shall be deemed binding on the parties.

- b. In the event of a dispute between the STATE and DEVELOPER subsequent to entry into the construction contract for the Interchange, an independent third party shall be appointed by the parties and the decision of such arbitrator shall be deemed binding on the parties.
 - c. In the event the parties cannot agree upon the selection of an independent third party arbitrator within thirty (30) days, the matter shall be referred to the American Arbitration Association, Construction Arbitration Division for determination. A determination by the American Arbitration Association shall be binding upon the parties. The parties agree that a hearing will be requested within (30) days from the demand for the American Arbitration Association arbitration.
- 3. The parties agree that all costs incurred relating to the independent third party arbitrator or the American Arbitration Association, Construction Arbitration Division shall be borne equally by the two parties.
 - 4. To the extent permitted by law, STATE and DEVELOPER agree to defend, indemnify, and hold harmless each other and their agents, officials, employees and subsidiaries, from and against any and all claims, actions, demands, liability, damage, cost and expense of whatsoever character whether direct or indirect, or consequential, including loss damage to property of either party hereto or of their persons and for the injury or death to any or all persons caused by or attributable to the negligence or fault of the State or Association, their employees or agents. As to any liability claims where the parties hereto may be jointly at fault, whether or not a named defendant to an action, the parties agree that they will share in any settlement or judgment in the amount that is proportionate to the degree of negligence or fault of the respective parties as agreed to between them or adjudicated by the courts.
 - 5. The parties acknowledge and agree this project is being funded by the DEVELOPER and the DEVELOPER shall be solely responsible for all approved costs.
 - 6. In the event the contractor or DEVELOPER fails to complete construction, the STATE may complete the construction, utilizing DEVELOPER funds and/or the surety bond posted by the contractor.

7. This agreement shall be effective as of date of execution.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

STATE:

STATE OF ARIZONA, ARIZONA
DEPARTMENT OF TRANSPORTATION

By: 

W. O. FORD, State Engineer

DEVELOPER:

SUPERSTITION SPRINGS DEVELOPMENT
COMPANY; a Division of Western
Savings & Loan.

By: 

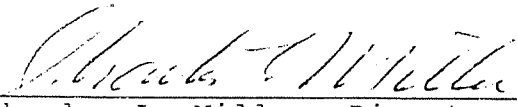
Stephen Eastham
Director of Planning & Development

SECTION: Superstition
Springs Blvd.

RESOLUTION

BE IT RESOLVED on this 19th day of November, 1987, that I, CHARLES L. MILLER, as Director, ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the State of Arizona, that the DEPARTMENT OF TRANSPORTATION, acting by and through the Highways Division, enter into an Agreement with the Superstition Springs Development Company for the purpose of constructing a half-diamond traffic interchange at Superstition Springs Boulevard and the Superstition Freeway.

THEREFORE, authorization is hereby given to draft said Agreement which, upon completion, shall be submitted for approval and execution by the State Engineer.


Charles L. Miller, Director
Arizona Department of
Transportation

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